



Constitutional and Legislative Affairs Committee

Summer 2012 subsidiarity monitoring report (May 2012 – August 2012)

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This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

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1. Introduction

Under Standing Order 21, a “responsible committee” in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, in order to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.¹

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. **It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.** *[RS emphasis]*²

2. The monitoring process

¹ Official Journal of the European Union, [*Consolidated version of the Treaty on European Union*](#), C83/204, 30 March 2010

² Official Journal of the European Union, [*Protocol on the Application of the Principles of Subsidiarity and Proportionality*](#), C310/207, 16 December 2004

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are also sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are “legislative” or “non-legislative”³ and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both “legislative” and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a “reasoned opinion” on the proposal or not.
- Those proposals which are “legislative” and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly’s Research Service between May and August 2012, and provides further information about those proposals that were identified by Assembly officials as being both “legislative” in nature and relating to devolved matters.

Please note however that this report only monitors “legislative” proposals, **it does not** contain details of any “non-legislative proposals” that may be relevant to the work of the Assembly. These are monitored on a separate basis by the Research Service.

³ Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

3. Overview of draft EU legislative proposals received (May 2012 – August 2012)

A total of **263** UK Government EMs relating to EU proposals were received by the Assembly's Research Service between 1 May 2012 and 31 August 2012. Of these, **10** EMs were identified by Assembly officials as being both "legislative" in nature and of interest to the Assembly. Following further analysis, officials in the Assembly's Legal Service, Brussels Office and Research Service, found that none of these proposals raised subsidiarity concerns. Additional details about these relevant proposals are included below.

3.1. EU legislative proposals that did not raise any subsidiarity concerns

**Date EM
emailed**

Title and description

*An amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1760/2000 as regards **electronic identification of bovine animals and deleting the provisions on voluntary beef labelling** (COM(2012)162).*

2 May 2012

This proposal is a modified version of Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and deleting the provisions of voluntary beef labelling, which was in itself a regulation which amended a previous proposal. This modified proposal amends only the Article in the initial regulations dealing with the administration of sanctions where there is non-compliance. It is therefore an enabling proposal that will eventually allow for the electronic identification of cattle; abolition of cattle passports for domestic trade; electronic herd registers; and the removal of provisions relating to the voluntary labelling of beef.

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2371/2002 on the **conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy** (COM (2012) 277)*

22 June 2012

This proposal proposes an extension of the access restriction regime provided under Article 17 (2) of the Common Fisheries Policy (Regulation 2371/2002) which is otherwise due to expire in December 2012 for a further two years.

*Proposal for a Council Decision on the conclusion of the Nagoya-Kuala Lumpur **Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety ("the Supplementary Protocol")** (COM(2012)236)*

27 June 2012

This proposal makes provision for conclusion of the Supplementary Protocol, which sets out rules governing liability and redress should the trans boundary movement of Genetically Modified Organisms have a significant adverse effect on the conservation and sustainable use of biological diversity – by the European Union. The UK signed the Supplementary Protocol in February 2012.

9 July 2012

*Amending Annexes I and IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down **rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies to allow pig and poultry processed animal protein (PAP) to be incorporated into farmed fish feed** (SANCO 10843/2011)*

This proposal allows pig and poultry processed animal protein (PAP) to be incorporated into farmed fish only. The European Commission's longer term objective is to continue working with the EU Reference Laboratory for Animal Proteins in Feed regarding the development of a validated diagnostic method which is able to detect the presence of porcine or poultry material in food.

11 July 2012

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1005/2008 **establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing** (COM(2012)332).*

This proposal empowers the Commission to adopt delegated acts for the following: the notification of information by fishing vessels and notification periods; the establishment of benchmarks for inspections of landings and transshipment operations by third country fishing vessels; the establishment of lists of products excluded from catch certificate obligations including their deadlines; rules around the establishment of approved economic operators; and the establishment of Union criteria for verifications in the context of risk management.

13 July 2012

*Draft Instrument for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning **the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms** and repealing Council Regulation (EC) No 1288/2009 (COM(2012)298).*

This proposal extends a set of transitional arrangements relating to

fisheries technical conservation measures which will have to be agreed by the end of 2012 to prevent the measures lapsing.

*Proposal for a regulation of the European Parliament and of the Council on **clinical trials on medicinal products for human use**, and repealing Directive 2001/20/EC (COM(2012)369).*

14 August
2012

The proposal aims to simplify the rules for conducting clinical trials to ensure that they are identical throughout the EU. Such simplification will facilitate the conduct of multistate trials. The Regulation will replace the Clinical Trials Directive 2001/20/EC which was widely acknowledged to have reduced the attractiveness of the EU as a place to conduct clinical trials on medicines.

*Draft Instrument for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning **the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms** (COM(2012)432)*

15 August
2012

This proposal aims to align the European Commission's existing powers relating to technical conservation rules for fishery resources in line with requirements set out in the Lisbon Treaty. These existing powers relate to: measuring nets and engine power; square mesh netting and twine thickness; construction of netting material; attachments which may obstruct or diminish mesh openings in nets; means of reporting on beam trawls; Member State restrictions on fishing effort in ICES Area IXa; and emergency measures for conservation of marine resources.

*Draft Instrument for a Regulation of the European Parliament and of the Council **establishing specific conditions for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic** and repealing Regulation (EC) No 2347/2002 (COM(2012)371).*

15 August
2012

This proposal relates to specific management measures for the EU's deep sea fisheries. In particular it seeks to update and replace the current deep sea access regime (as currently set out in Regulation 2347/2002) with the aim of addressing four key problems with managing deep sea stocks.

30 August *Draft Instrument for a Regulation of the European Parliament and of the*



2012

*Council amending Council Regulation (EC) No 812/2004 **laying down measures concerning incidental catches of cetaceans in fisheries** and amending Regulation (EC) No 88/98 (COM(2012)447).*

This proposal aims to align the European Commission's existing powers in order to adapt conditions and technical specifications for the use of acoustic deterrent devices to reduce the incidental by-catch of cetaceans in specified fisheries (currently contained in Annex II of Regulation 812/2004); and to adapt the procedure and format for reporting obligations for Member States.